The matrimonial history of the defendant shows that she is more concerned with her own welfare than that of her children. Custody of her son by her marriage, born on 12 September 1981, was given to her former husband in consideration of his not contesting the divorce petition, an allegation made by the plaintiff which she has denied. But the grounds of her petition for divorce were that, inter alia, her husband had failed to maintain her and the son and had behaved in such a way that she could not be reasonably expected to live with him. She should never have surrendered the custody of her son on these grounds.

In my view, the strongest evidence of her lack of interest in the child, and therefore his welfare, is the fact that although it has been alleged that the plaintiff had forcibly taken his son away from her (or her sister), the defendant took no steps to resume custody of the child. It is the plaintiff who has taken the initiative to regularize his position vis-à-vis his son by making this application for custody. This, to me, is a clear indication that he cares more for his son and his welfare than his mother.

For the above reasons, I granted custody of the child to the plaintiff and reasonable access to the defendant.

Order accordingly.

Solicitors: *Derrick Jeffrey & Ravi.*

Reported by *Gabriel Sebastian*

BRUNEI REPORTS

Khoo Ban Hock v Public Prosecutor

COURT OF APPEAL (BANDAR SERI BEGAWAN) – CRIMINAL APPEAL NO 3 OF 1988
YANG P, SILKE AND GODFREY JJ
25 AND 26 MAY 1988

Criminal Procedure – Sentences – Whether sentence of four years' imprisonment for criminal conspiracy to defraud was excessive – Exceptional mitigating factors – Appellant did not make personal financial gain – Previous good character – Unusual circumstances to be reflected in sentence – Principles applicable

The appellant pleaded guilty to a charge of criminal conspiracy to defraud under s 120B(2) of the Penal Code read with s 420. The appellant was the son of K, a prominent businessman and founder of NBB, a bank. Although the appellant was named as the chairman of NBB, K was the moving spirit behind the business. It transpired that NBB had made large unsecured loans to companies connected with K. The accounts of NBB were 'fiddled' to make it appear that there were profits. This was done to induce others, including the Government, to deposit money with NBB. The appellant claimed to know little about banking. He signed the accounts and reports blindly, without reading them. He was a filial son who did what his father told him. The trial court sentenced the appellant to four years' imprisonment. The appellant appealed against his sentence, contending that the trial court failed to give due weight to the exceptional mitigating circumstances generally and in particular to the appellant's previous good character and his lack of intention to make a personal financial gain. It was also submitted that as the legislation provided for a maximum term of seven years' imprisonment for the offence, there was a failure to give a sufficient discount to the appellant's plea of guilty.

Held, allowing the appeal: (1) In assessing whether the sentence given by the trial court was excessive, the discount for a plea of guilty should be substantial and the question to be asked is: If there were a conviction after trial, what would have been the appropriate sentence.

(2) It was accepted that the appellant was not a policy maker in NBB. But he should have realized that he had a duty to the outside shareholders of NBB and towards depositors and overseas institutions which were being provided with false information to induce them to deposit money with NBB. He failed to perform those duties. When he knew that something was wrong he should have resigned. He did not do so. The offences to which the appellant pleaded were grave and there should rightfully be an element of deterrence in that a chairman of a would-be major bank must receive such punishment as will in the public eye be a reflection of the gravity of his offence.

(3) However, the appellant did not, nor did he intend to, line his own pockets with public money. The evidence of any loss to the public is neutral and the benefit should be given to the appellant.

(4) The case is an unusual one and the sentence did not sufficiently reflect this aspect. Bearing in mind also all the other mitigating factors, the appeal court's interference is warranted.

(5) The proper sentence should be one of three years' imprisonment.

Cases referred to

1 *PP* v *Datuk Haji Harun bin Haji Idris & Ors* [1977] 1 MLJ 180 (refd)
2 *R* v *Jacob* (1981) 3 Cr App R (S) 298 (refd)
3 *R* v *Carr* (1984) 6 Cr App R (S) 359 (refd)
4 *Siah Ooi Choe* v *PP* [1988] 2 MLJ 342 (refd)
5 *R* v *Boyd* (1980) Cr App R (S) 234 (folld)
6 *R* v *Barrick* (1985) 81 Cr App R 78 (refd)

Legislation referred to

Penal Code ss 120B(1) & (2), 420

Ross-Munro QC and *David Young* for the appellant.
Michael Corkery QC and *Ahmad Zakaria* for the respondent.

Cur Adv Vult

Silke J (delivering the judgment of the court): The appellant, Khoo Ban Hock, chairman of the National Bank of Brunei – 'NBB' – since 1973 and three others, namely Andrew Peattie, Azlan Robert Teo and Bernard Soo, went on trial on 12 October 1987 before Mortimer J sitting as judicial commissioner. The appellant pleaded not guilty to all of the eight charges which concerned him.

On 19 November, he changed his plea to the charges numbered 1 and 16, maintaining his plea in respect of the remainder. On those the Attorney General eventually entered a nolle prosequi and undertook not to proceed with them further.

The trial of the co-accused continued. They also pleaded guilty to a number of the charges at differing times – with the exception of Bernard Soo who was acquitted.

On 16 February 1988, the appellant was sentenced to four months' imprisonment on charge 1 – the maximum sentence under the law being one of six months – and to four years on charge 16 – the maximum being seven years. Custodial sentences were also passed on the co-accused.

Charge 1, punishable under s 120B(2) of the Penal Code, alleged that the appellant together with Tan Seng Kok, Sim Kia Teck, Tan Sri Khoo Teck Puat and others between 1 January 1983 and 20 November 1986 committed criminal conspiracy to defraud NBB.

Charge 16, punishable under s 120B(1) read with s 420 of the Penal Code, alleged that the appellant together with the persons named in count 1 and others, between 25 April 1986 and 20 November 1986 committed criminal conspiracy to cheat. This relates to the annual report of NBB for 1985.

The rest of the body of charge 16 gives the flavour of the nature of the main conspiracy charged. It reads:

> '... to cheat such corporations, companies, partnerships, firms and persons as might be fraudulently or dishonestly induced by deception to deliver property to National Bank of Brunei Bhd and to authorize the transfer of funds by deceiving such corporations, companies, partnerships, firms and persons by publishing false and misleading financial information in the annual report for 1985 of National Bank of Brunei Bhd and failing to disclose therein, or at all, the true nature, quality, constitution and extent of the said bank's lending and further by failing to disclose therein, or at all, the artificial inflation of the said bank's assets, liabilities and profits in order to induce them to deliver property to National Bank of Brunei Bhd and to authorize the transfer of funds ...'

It is the four-year sentence passed on this charge on which the appellant now appeals. He does not seek to appeal against the sentence on charge 1.

The appellant is the eldest son of Tan Sri Khoo who, in 1964, founded NBB. The bank had its headquarters in Brunei where there were also eleven branches. Tan Sri Khoo owned 98% of the shares of the bank in 1982. Later this became 68%. The day-to-day management in Brunei was carried out by Tan Seng Kok, one of the named co-conspirators, but the real control and management lay in Singapore and in the hands of Tan Sri Khoo. After 1983 when Tan returned to Singapore, Azlan Robert Teo, a co-accused, took over the Brunei management. In Singapore a Khoo-controlled company, Management Services Ltd, housed the controllers of the bank. There the appellant, Bobby Sim Kia Teck, assisted by Lily Lok, Tan Seng Kok, Tan Sri Khoo and other employees of Tan Sri Khoo, had offices. On the same floor but partially separated were the offices of Andrew Peattie and Co, the auditors of NBB. The appellant travelled to Brunei once a week, usually on Wednesday.

Over the years Tan Sri Khoo amassed a huge business conglomerate consisting of about 60 companies, all of which he controlled either directly or by way of holding companies. He had major interests in Australia and other countries as well as in Singapore. Many of the companies were $2 shells.

During those years, NBB lent vast sums of money to the companies in the Khoo group. This lending increased from 1983 up to the arrests, including that of the appellant, which took place on 20 November 1986. These advances were unlimited, without security or guarantee; there was no memorandum recording their purpose; interest payments were simply rolled over year after year. By 31 December 1985 these loans reached the figure of $1 billion. This was not a net figure as the Khoo group also placed large deposits in NBB. It gives, however, some idea of the magnitude of the conspiracy.

The books of NBB were, to put not too fine a point on it, fiddled. The interest, even on dormant loans on which there was no capital repayment, appeared in the books as profit. Circular transactions took place to give false year-end profits. Shares were bought at advantageous prices, shares were sold at year end at a profit and that profit appeared in the books as part of the

ordinary business of the bank. Substantial dividends were paid, shown in the books less a non-existent income tax. No indication was given of loans made to related party interests. There were full scale and illegitimate window-dressing and a misuse of bank funds.

All this was done to make the bank appear a thriving business to permit the solicitation of deposits from overseas institutions and from the government of Brunei. Those who ran the bank knew their banking business in Brunei was too small, and had too many others wishing to obtain a slice of the cake to make it very profitable. Hence the necessity for large outside deposits. It rebounded to the advantage of the Khoo group of companies for they got unsecured loans which might have been difficult if not impossible to obtain elsewhere.

Generally it is clear that Tan Sri Khoo ran the Khoo group, and NBB, as if it was his personal chief. And it was the Crown's case that he was the main conspirator. He undoubtedly amassed great wealth. No company of his had ever been allowed to go to the wall.

The appellant was an excessively filial son. He did what his father told him to do. He evinced no great interest in banking and his knowledge of accounts was rudimentary. His forte was personal relations. He arranged hotel accommodation in Singapore for visiting Brunei business acquaintances. He shopped in Singapore for them and for their wives, bringing the proceeds to Brunei on his weekly visits. He got on well with everyone from the high to the low. His main interest in life seems to have been the rehabilitation of old cars – there was a garage underneath Management Services in Singapore where he spent most of his time – and dealing with people.

He signed the loan memoranda automatically when they were left for him in Singapore. He brought them to Brunei for processing. He was chairman of the board of directors and of the general management of the bank. He signed the annual reports. He attended board meetings with a brief given to him by his father. He signed, without reading, business banking letters which were drafted and typed for him. The drafting was mostly done by his father.

Mitigation witnesses were called to show how kind, popular and good a person he was. Mortimer J, however, was disbelieving when they also attempted to distance the appellant too far from knowledge of all that was going on in NBB. The appellant clearly took some interest in what was going on, however simplistic his activities were.

He had some prior banking experience, having worked after leaving school at the age of 18, where he had an undistinguished academic record, in Bank Negara and he did a short course in the Midland Bank. After that his father employed him in companies in the Khoo group. Then came the chairmanship of NBB. He was created a Pehin Dato – a title now stripped from him – in 1982.

He became aware of the window-dressing of the accounts. It worried him. He spoke to his father who told him it was normal banking practice.

Mr Ross-Munro, in his comprehensive submissions to us, and indeed to the trial judge, says that that view of the father was not without some substance. He has drawn our attention to the 'sovereign loans' – loans made by banks of world-standing to the less developed countries – and how eventually these came home to roost when, after years of inadequate provision, those banks were forced to make realistic provision in their accounts which mightily affected their true profits. But it must be remembered that the window-dressing of NBB was a deliberate policy to create a totally false picture – and over the years – in the NBB annual reports. In the books of the sovereign loan banks at least the existence of the loans was recognized. The appellant knew, despite a somewhat equivocal reassurance by Andrew Peattie, that he was signing window-dressed annual reports. He was of course influenced by that which his dominating and immensely wealthy father had told him. He was further influenced by the comforting thought that his father's wealth meant that no day of reckoning would ever come as, if necessary, all could be settled with no one the loser. In any event, as his father's son in a tight and feudal Chinese family relationship, he simply did that which his father told him to do.

It is accepted that he was not a policy maker in the bank. But he did, and should have realized it, have a duty to the outside shareholders in NBB – small though their number might have been. He also had a duty towards depositors and towards those overseas institutions which were being provided with false information so as to induce them to make deposits with NBB. He signally failed to perform those duties. When he knew that something was wrong he should have resigned. He did not do so.

He accepted that by his actions he put the assets of the bank in jeopardy and that he acted with such a complete degree of recklessness that those actions amounted to a defrauding sufficient to ground the first charge. He maintains, however, that he did not think himself to be committing a criminal act.

Mr Ross-Munro submitted to the trial judge and also to us that there were here exceptional mitigating circumstances. He instanced 13 in particular:

(1) The multiplicity of loan memoranda were merely presented to the appellant for signature just before his weekly trip to Brunei and signed unread.
(2) The appellant had no role as a policy maker.
(3) His knowledge of accounts was rudimentary.
(4) His personal accounts with NBB while overdrawn were well secured.
(5) He did not intend nor did he in fact make any personal financial gain from the conspiracies.

(6) He knew the essentials of the conspiracy in charge 16 but relied on the assurances given to him by his father that window-dressing was normal, and he thought that his father's wealth could absorb the wrongful loans.

(7) He knew generous dividends were paid by NBB to the minority shareholders.

(8) He thought of NBB as a private family bank controlled by his father and part of the wider group of Khoo companies also controlled by his father.

(9) He thought his father to be blessed with a Midas touch – as the evidence showed he was.

(10) His father's public reputation for immense wealth ran through the period of charge 1 – 1 January 1983 to 20 November 1986.

(11) Most of the letters bearing the signature of the appellant were drafted by his father or others on his father's instructions.

(12) He was the courier of his father's written instructions.

(13) He was of good character.

The gravamen of this appeal is that the trial judge failed to give due weight to those mitigating factors generally, and in particular to the appellant's previous good character and his lack of intention to make personal financial gain. Mr Ross-Munro adds to this what he says is the failure of the judge to give credit for no loss having been occasioned to anyone and, the legislation having provided for a maximum term of imprisonment of seven years for charge 16, a failure to give sufficient discount to the appellant for that which the trial judge termed 'his courageous plea of guilty'.

On the good character aspect, donning sackcloth and covering himself with ashes, Mr Ross-Munro has presented to us a series of authorities which were not brought to the attention of the trial judge. These relate to the 'clang of the prison gate' effect on a man such as Khoo Ban Hock. He has referred us to *Datuk Haji Harun bin Haji Idris & Ors*,[1] *R* v *Jacob*,[2] *R* v *Carr*[3] and *Siah Ooi Choe* v *PP*[4] in Singapore. He accepts that a custodial sentence is inevitable but submits that there is no necessity for a long period of imprisonment to restore public confidence; that we should consider what is the shortest sentence commensurate with the public interest given the nature and the circumstances of the appellant. In any event the discount for plea should be substantial and the question we should ask ourselves is: If there were a conviction after trial, what would have been the appropriate sentence (see *R* v *Boyd*[5]). Mr Corkery has very helpfully drawn our attention to *R* v *Barrick*.[6]

The offences to which the appellant pleaded were grave; he held a high position of trust, a trust, whether old-fashioned Chinese family member or not, he grossly abused. The trial judge was fully aware of the quality and nature of the plea. He took, and rightly so, a serious view of the appellant's part.

Here there should be an element of deterrence in that a chairman of a would-be major bank must, in our judgment, receive such punishment as will in the public eye be a reflection of the gravity of his offence. Generally the Khoo group of companies benefited from the actions of the conspirators in the manner which I have indicated. While the appellant did not actually pocket cash, some of this benefit must have enured to him.

But, that having been said, Khoo Ban Hock did not, nor did he intend by his actions, to line his own pockets with public money. We accept that, for reasons we need not go into – there being civil litigation in progress – that the evidence of any loss to the public is neutral and that the benefit should be given to the appellant. In that sense the case is indeed an unusual one. We do not feel that, with respect, in his careful reasons on sentence the trial judge sufficiently reflected this aspect. We think that, bearing in mind also all the other mitigating factors, our interference is warranted.

The proper sentence, and it must be of some length, appears to us in all the circumstances to be one of three years' imprisonment.

Therefore we allow the appeal, set aside the sentence of four years passed on charge 16 and substitute therefor one of three years. The sentence on charge 1 is left undisturbed and will continue to be concurrent with that on charge 16.

Appeal allowed

Solicitors: *Bonds*.

Reported by *Ng Sheau Jiuan*

Re Alan Wong Hoi Ping

HIGH COURT (BANDAR SERI BEGAWAN) – PETITION NO 15 OF 1988
GODFREY J
15 JUNE 1988

Legal Profession – Admission as advocate and solicitor – Petition for – Petitioner previously convicted of criminal offences but convictions were subsequently quashed – Whether requirement of 'good character' was satisfied – Whether effect of certificates of good character was displaced – Legal Profession Act (Cap 132), s 4(b)

Words and Phrases – 'Good character' – Legal Profession Act (Cap 132), s 4(b)

This is an application by the petitioner to be admitted as an advocate and solicitor under s 4 of the Legal Profession Act (Cap 132) ('the Act'). In order to satisfy the requirement of good character as provided for under s 4(b) of the Act, the petitioner filed three certificates of good character in support of his application. The Attorney General opposed the application on the ground that the petitioner was previously convicted by the Singapore District Court for certain criminal offences. The convictions were subsequently quashed on appeal. The two